IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.833 of 2007.

Date of decision: 5.12.2007.

State of H.P. **…….Petitioner**

Vs.

Anand Prakash **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr. P.M. Negi, Deputy Advocate General.

For the Respondent : None.

***Kuldip Singh, Judge*.(Oral)**

This petition has been filed for seeking leave to file appeal against the judgment of acquittal dated 16.8.2007 passed by learned Judicial Magistrate Ist Class, Court No.(VI), Shimla in Cr. Case No.33-2 of 2006/05 under Sections 279, 337 and 338 IPC.

2. The prosecution case in brief is that on 8.8.2005 respondent was driving Maruti Van No.HP01A-0358 near Ghanatti, Shimla in rash or negligent manner so as to endanger human life and personal safety of others, as a result of which Van rolled down and PW-2 Joginder Malta sustained grievous injuries, the respondent also sustained simple injuries on his person. PW-2 lodged FIR, after completion of investigation, challan was filed against the respondent, notice of accusation was put to respondent under Sections 279, 337

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

and 338 IPC. After conclusion of trial learned trial Magistrate acquitted the respondent.

3. PW-2 Joginder Malta complainant has stated that on the relevant date he was coming from Dharamshala to Shimla in his Maruti Van along with respondent who was driving the Van. At place near Ghanatti Maruti Van rolled down from the road from right side adjoining one building. He has also stated that on asking the respondent how the vehicle rolled down, the respondent told that he was feeling sleepy at the time of the accident. In cross-examination he has stated that he was sitting on the back seat of the Van at the relevant time. He has admitted that Van dashed against the wall of the building from the driver side. He has also admitted that respondent has not received much injuries in the accident, he denied that he was driving the Van at the time of the accident. He received grievous injuries on his person. The PW-2 has not stated that respondent was driving the vehicle in rash and negligent manner. The complainant has received more injuries in comparison to respondent. PW-4 HC Gian Chand, mechanical expert has stated that the driver portion was got damaged in the accident. He has admitted the suggestion that in view of the circumstances of the accident the driver would receive maximum injuries. The defence of the respondent is that he was not driving the Van at the time of accident, rather the complainant was driving the Van. The bald statement of complainant that at the time of accident respondent was driving the Van is not sufficient to prove the guilt of respondent. The Van was damaged more from driver side. The complainant has

received more injuries in comparison to respondent in the accident. The possibility cannot be ruled out that complainant was driving the Van at the time of the accident. The learned trial Magistrate has rightly appreciated the material on record, no case has been made for granting leave, hence leave to appeal rejected.

(Kuldip Singh)
Judge.

December 5, 2007
(sks)